

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

**Wells Fargo Bank,National Association as
Trustee for SABR 2004-OP1 Mortgage Pass-
Through Certificates, Series 2004-OP1**

Plaintiff

vs.

**Benjamin P. Campo, Esq., Special
Administrator of the Estate of Debra M.
Mitchell**

Defendant

**U.S. Bank National Association as trustee of
CVI Loan GT Trust I.**

Party-In-Interest

CIVIL ACTION NO:

COMPLAINT

RE:

**1564 Swan Lake Avenue, Swanville, ME
04915**

Mortgage:

**December 10, 2003
Book 2534, Page 63**

NOW COMES the Plaintiff, Wells Fargo Bank,National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, by and through its attorneys, Doonan, Graves & Longoria, LLC, and hereby complains against the Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant 28 U.S.C. § 1332(a)(1) (Diversity) because the Plaintiff and Defendant are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand and 00/100 (\$75,000.00) dollars, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the object of this litigation is a Note executed under seal currently owned and held by Wells Fargo Bank, National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, in which the Defendants, Carleton O. Mitchell and Debra M. Mitchell, are the obligor and the total amount owed under the terms of the Note is Eighty-Three Thousand One Hundred Thirty-Four and 56/100 (\$83,134.56) Dollars, plus attorney fees and costs associated with the instant action; thus, the amount in controversy exceeds the jurisdictional threshold of seventy-five thousand (\$75,000.00) dollars.
3. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

PARTIES

4. Wells Fargo Bank, National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1 is a corporation with its principal place of business located at c/o Select Portfolio Servicing, Inc., 3217 S. Decker Lake Drive, Salt Lake City, UT 84119.
5. The Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, is a resident of Westbrook, County of Cumberland and State of Maine.
6. The Party-in-Interest, U.S. Bank National Association as trustee of CVI Loan GT Trust I, is located at 425 Walnut Street, Cincinnati, OH 45202.

FACTS

7. On August 11, 2000, by virtue of a Warranty Deed from Jeanna L Bonin, which is recorded in the Waldo County Registry of Deeds in **Book 2025, Page 102**, the property situated at 1564 Swan Lake Avenue, City/Town of Swanville, County of Waldo, and State of Maine, was conveyed to Carleton O. Mitchell and Debra M. Mitchell , being more particularly described by the attached Exhibit A
8. On December 10, 2003, Carleton O. Mitchell and Debra M. Mitchell, executed and delivered to Option One Mortgage Corporation a certain Note under seal in the amount of \$70,500.00. Defendants, Debra M. Mitchell and Carleton O. Mitchell's personal liability is limited and/or extinguished by the Chapter 7 bankruptcy filed which resulted in a bankruptcy discharge. *See* Exhibit B (a true and correct copy of the Note is attached hereto and incorporated herein).
9. To secure said Note, on December 10, 2003, Debra M. Mitchell and Carleton O. Mitchell executed a Mortgage Deed in favor of Option One Mortgage Corporation, securing the property located at 1564 Swan Lake Avenue, Swanville, ME 04915 which Mortgage Deed is recorded in the Waldo County Registry of Deeds in **Book 2534, Page 63**. *See* Exhibit C (a true and correct copy of the Mortgage is attached hereto and incorporated herein).
10. The Mortgage was then assigned to Wells Fargo Bank,National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1 by virtue of an Assignment of Mortgage dated December 17, 2003 and recorded in the Waldo County Registry of Deeds in **Book 4324, Page 80**. *See* Exhibit D (a true and correct copy of the Assignment of Mortgage is attached hereto and incorporated herein).
11. On March 19, 2021, the Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, was sent a Notice of Mortgagor's Right to Cure, as evidenced

by the Certificate of Mailing (herein after referred to as the “Demand Letter”). *See* Exhibit E (a true and correct copy of the Demand Letter is attached hereto and incorporated herein).

12. The Demand Letter informed, the Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, of the payment due date, the total amount necessary to cure the default, and the deadline by which the default must be cured, which was thirty-five (35) days from receipt of the Demand Letter. *See* Exhibit E.
13. The Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, failed to cure the default prior to the expiration of the Demand Letter. Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M Mitchell, is not personally liable and accordingly, this action does not seek any personal liability on the part of the Defendant, but only seeks in rem Judgment against the property.
14. The Plaintiff, Wells Fargo Bank,National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, is the present holder of the Note pursuant to endorsement by the previous holder (if applicable), payment of value and physical possession of the Note in conformity with 11 M.R.S. § 3-1201, et seq., and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929).
15. The Plaintiff, Wells Fargo Bank,National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, is the lawful holder and owner of the Note and Mortgage.
16. The Plaintiff, Wells Fargo Bank,National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, hereby certifies that all steps mandated by law to provide notice to the mortgagor pursuant to 14 M.R.S.A. § 6111 and/or Note and Mortgage were strictly performed.

17. U.S. Bank National Association as trustee of CVI Loan GT Trust I. is a Party-in-Interest pursuant to a Junior Mortgage originally given to Citifinancial, Inc., in the amount of \$17,832.79 dated October 26, 2005, and recorded in the Waldo County Registry of Deeds in **Book 2847, Page 16**. Said Mortgage was assigned to U.S. Bank National Association as trustee of CVI Loan GT Trust I by nirtue of an Assignment of Mortgage dated October 25, 2013, and recorded in the Waldo County Registry of Deeds in **Book 3821, Page 113**, and is in first position behind Plaintiff's Mortgage.
18. Upon information and belief Carlton O. Mitchell passed away on October 13, 2011.
19. Upon information and belief Debra M Mitchell passed away on August 13, 2017.
20. The total debt owed under the Note and Mortgage as of May 16, 2021 is Eighty-Three Thousand One Hundred Thirty-Four and 56/100 (\$83,134.56) Dollars, which includes:

Description	Amount
Principal Balance	\$56,521.47
Interest	\$16,095.73
Escrow/Impound Required	\$3,188.13
Late Fees	\$77.58
Total Advances	\$7,251.65
Grand Total	\$83,134.56

21. Upon information and belief, the Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, is presently in possession of the subject property originally secured by the Mortgage.

COUNT I – FORECLOSURE AND SALE

22. The Plaintiff, Wells Fargo Bank,National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, repeats and re-alleges paragraphs 1 through 20 as if fully set forth herein.

23. This is an action for foreclosure and sale respecting a real estate related Mortgage and title located at 1564 Swan Lake Avenue, Swanville, County of Waldo, and State of Maine. *See* Exhibit A.
24. The Plaintiff, Wells Fargo Bank, National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, is the holder of the Note referenced in Paragraph 8 pursuant to endorsement by the previous holder (if applicable) and physical possession of the aforesaid Note in conformity with Title 11, section 3-1201, et seq. of the Maine Revised Statutes and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929). As such, Plaintiff, Wells Fargo Bank, National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, has the right to foreclosure and sale upon the subject property.
25. The Plaintiff, Wells Fargo Bank, National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, is the current owner and investor of the aforesaid Mortgage and Note.
26. The Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, is presently in default on said Mortgage and Note, having failed to make the monthly payment due September 1, 2017, and all subsequent payments, and, therefore, have breached the condition of the aforesaid Mortgage and Note.
27. The total debt owed under the Note and Mortgage as of May 16, 2021 is Eighty-Three Thousand One Hundred Thirty-Four and 56/100 (\$83,134.56) Dollars, which includes:

Description	Amount
Principal Balance	\$56,521.47
Interest	\$16,095.73
Escrow/Impound Required	\$3,188.13
Late Fees	\$77.58

Total Advances	\$7,251.65
Grand Total	\$83,134.56

28. The record established through the Waldo County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the mortgaged premises at issue herein.
29. By virtue of the Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell breach of condition, the Plaintiff hereby demands a foreclosure and sale on said real estate, as affected by Defendants, Debra M. Mitchell and Carleton O. Mitchell's discharge in bankruptcy and, accordingly, this action does not seek any personal liability on the part of the Defendants, Debra M. Mitchell and Carleton O. Mitchell, but only seeks *in rem* judgment against the property.
30. Notice in conformity with 14 M.R.S.A. § 6111 and/or Note and Mortgage was sent to the Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, on March 19, 2021, evidenced by the Certificate of Mailing. *See* Exhibit F.
31. The Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, is not in the Military as evidenced by the attached Exhibit G.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, Wells Fargo Bank, National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, prays this Honorable Court:

- a) Issue a judgment of foreclosure and sale in conformity with Title 14 § 6322, as affected by Defendants, Debra M. Mitchell and Carleton O. Mitchell's discharge in bankruptcy, and accordingly, this action does not seek any personal liability on the part of the Defendants, but only seeks *in rem* judgment against the property;

- b) Grant possession to the Plaintiff, Wells Fargo Bank, National Association as Trustee for SABR 2004-OP1 Mortgage Pass-Through Certificates, Series 2004-OP1, upon the expiration of the period of redemption;
- c) Find that the Defendant, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, is not personally liable and accordingly, in breach of the Note by failing to make payment due as of September 1, 2017, and all subsequent payments, however, as affected by Defendants, Debra M. Mitchell and Carleton O. Mitchell's discharge in bankruptcy, this action does not seek any personal liability on the part of the Defendants, Debra M. Mitchell and Carleton O. Mitchell, but only seeks *in rem* judgment against the property;
- d) Impose the applicable time periods for redemption, etc., as reflected in 14 M.R.S.A. § 6322;
- e) Find that while the Defendants, Benjamin P. Campo, Esq., Special Administrator of the Estate of Debra M. Mitchell, have no personal liability in this matter, a Judgment of Foreclosure and Sale in this matter can be imposed *in rem* against the property commonly known as and numbered as 1564 Swan Lake Avenue, Swanville, ME 04915;
- f) For such other and further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,
Wells Fargo Bank, National Association as
Trustee for SABR 2004-OP1 Mortgage Pass-
Through Certificates, Series 2004-OP1,
By its attorneys,

Dated: May 24, 2021

/s/John A. Doonan, Esq.
/s/Reneau J. Longoria, Esq.
John A. Doonan, Esq., Bar No. 3250

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